

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

JUSTIN L. BYRNE, Plaintiff,	:	
	:	
	:	
v.	:	File No. 1:12-cv-245-jgm-jmc
	:	
MARY TRUDELL, JENNA GOGUEN, JOANNE PEREIRA, TOM DUNN, ANDREW PALLITO, JEFFREY LEGGIO, and DAVE NESBITT, Defendants.	:	
	:	
	:	

**ORDER**

The Magistrate Judge's Report and Recommendation was filed March 18, 2013.

(Doc. 24.) After de novo review and over objection, the Report and Recommendation is AFFIRMED, APPROVED and ADOPTED. See 28 U.S.C. § 636(b)(1).

Defendants' Motion to Dismiss (Doc. 12) is GRANTED in part and DENIED in part as follows:

1. Pursuant to the doctrine of sovereign immunity, to the extent Plaintiff brings his § 1983 claims against Defendants Pallito and Pereira for money damages in their official capacities, those claims are DISMISSED.

2. Due to their lack of personal involvement, the Fourteenth Amendment claims against Defendants Pereira and Dunn, as well as the Eighth and Fourteenth Amendment claims against Defendants Leggio and Nesbitt are DISMISSED.

3. All Eighth Amendment claims are DISMISSED for failure to allege violation of a federal right.

4. The Fourteenth Amendment claims against Defendants Leggio and Nesbitt are DISMISSED for failure to allege violation of a federal right.

5. Pursuant to Heck v. Humphrey, 512 U.S. 477 (1994), to the extent Plaintiff seeks immediate release from incarceration, this request for relief is DISMISSED.

6. All claims for punitive damages claims against Defendants Leggio, Nesbitt, Pallito, Pereira, and Dunn are DISMISSED.

7. Pursuant to the Vermont Tort Claims Act, all state tort claims against Defendants Pallito, Pereira, and Dunn are DISMISSED.

8. All remaining bases on which Defendants move to dismiss Plaintiff's claims are DENIED.

9. Plaintiff's "Motion to Strike Pursuant to Rule 12(f)(2)" (Doc. 17) is DENIED.

This matter is returned to Magistrate Judge John M. Conroy for further proceedings.

It is further certified that any appeal taken in forma pauperis from this Order would not be taken in good faith because such an appeal would be frivolous. See 28 U.S.C. § 1915(a)(3).

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 21<sup>st</sup> day of May, 2013.

/s/ J. Garvan Murtha  
Honorable J. Garvan Murtha  
United States District Judge